

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN FARRELL,

Defendant.

No. CR15-029RAJ

**UNITED STATES' RESPONSE TO
DEFENDANT FOR REDUCTION
IN SENTENCE PURSUANT TO
18 U.S.C. § 3582(c)(1)(A)**

I. INTRODUCTION

The United States of America, by Tessa M. Gorman, Acting United States Attorney for the Western District of Washington and Thomas M. Woods, Assistant United States Attorney for said district, files this memorandum in response to Defendant Brian Farrell's motion for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(1)(A). In summary, Farrell claims that FCI Sheridan mishandled his care after he became ill in March 2020, and that he continues to suffer from heart and lung problems. However, on April 7, 2021, Farrell was examined, and found not to suffer from any acute cardiopulmonary disease, and that his lungs were clear. He also has received both doses of Moderna's COVID-19 vaccine. Thus, there is no evidence that Farrell currently suffers from any serious medical

1 issues, or that his health and safety is endangered. Accordingly, his motion should be
2 denied.

3 **II. FACTUAL BACKGROUND**

4 **A. The Offense Conduct and Farrell's Guilty Plea and Sentence.**

5 The Silk Road was an online black market that offered various illegal items for sale,
6 including drugs. The Silk Road operated on the "The Onion Router" (the "Tor") network,
7 which is a special network of computers distributed around the world designed to conceal
8 the true Internet Protocol ("IP") addresses of the users on the network. Tor also enables
9 web sites to operate on the network in a manner that conceals the true IP address of the
10 computer server hosting the website.

11 In October 2013, law enforcement arrested the head of the Silk Road, Ross Ulbricht,
12 who operated under the name "Dread Pirate Roberts." The government also seized the Silk
13 Road website. Later that year, in the wake of these developments, Silk Road 2.0 ("SR2")
14 was launched. SR2, like the original Silk Road, contained a user-friendly interface with
15 links to various categories of items for sale on the site, including drugs such as MDMA
16 (Ecstasy), LSD, cannabis, hashish, methamphetamine, cocaine, and heroin. The site
17 offered other contraband for sale, including stolen property and malicious software and
18 computer equipment.

19 If a user clicked on any particular item for sale, the website would display the details
20 of the listing, including a description of the item, the price, the username of the vendor
21 selling the item, and prior customers' feedback on the vendor. To buy an item, the user
22 would click a link labeled "add to cart." The user was then prompted to supply a shipping
23 address and to confirm the placement of the order.

24 In July 2014, Seattle agents received a lead that a particular IP address had accessed
25 the vendor portion of SR2. A user could not accidentally end up on the vendor portion of
26 SR2. Rather, SR2 administrators/moderators restricted access to the vendor portion of the
27 site to vendors who had conducted a certain amount of transactions. In addition, a separate
28 username and password were required to access the vendor portion of SR2.

1 According to Comcast records, the IP address resolved to Farrell's address. On
2 December 22, 2014, law enforcement contacted Farrell at the residence. Farrell said that
3 he was familiar with Silk Road from the news, and said that he had visited the site within
4 the last six months. Farrell said, "I deal with bitcoins," further stating that Silk Road was
5 the "shady side of bitcoins." Farrell denied ever buying or selling drugs on the Silk Road,
6 further stating that to the best of his knowledge no one living with him was involved in
7 buying or selling drugs.

8 On January 2, 2015, agents, after receiving additional information from a
9 cooperating witness that Farrell was involved in SR2, executed a search warrant at Farrell's
10 Bellevue residence. During the course of the search, agents seized three handguns, various
11 computer media, various prescription medications, drug paraphernalia, silver bullion bars
12 valued at \$3,900.00, and approximately \$35,000 in U.S. currency.

13 On the day of the search, Farrell was interviewed after being provided *Miranda*
14 warnings. Initially, Farrell maintained that he did not really know much about SR2. Agents
15 then confronted Farrell with the fact that an IP address tied to the residence was tied to
16 SR2. Farrell stated many people had come and gone from the house and there had been a
17 lot of past users of the internet in the residence. Farrell stated he had registered with SR2
18 with a username to allow him to look around the site.

19 Agents asked Farrell whether he would help identify others involved in SR2. Farrell
20 stated, "You're not going to find much of a bigger fish than me." He continued by saying,
21 "My moniker on Silk Road was "DoctorClu." Agents asked Farrell what he did as
22 "DoctorClu," and he said he was the support manager and worked as "Defcon's" right hand
23 man. "Defcon," was the moniker used by Blake Benthall, the chief operator of SR2.

24 Farrell said that he had lead a "denial-of-service-attack" on the Tor Market, a
25 competitor to SR2. He said that after the attack, at the end of 2013, he was offered a staff
26 position on SR2. He said that he had been given a starting salary of about \$750.00 per
27 week that later climbed to about \$1,750.00 per week. Farrell said he did not have complete
28 access to SR2, but that he could change passwords on the site. He said he served mainly

1 as “Defcon’s” spokesman. Farrell said that other SR2 staff would obtain his permission to
 2 do things if they were unable to get a hold of “Defcon.”

3 Farrell was arrested and charged with conspiring to distribute controlled substance,
 4 in violation of Title 18, United States Code, Section 841(a) and 841(b)(1)(A). On March
 5 11, 2016, Farrell pleaded guilty to the same offense at the Section (b)(1)(B) level. On June
 6 3, 2016, the Court sentenced Farrell to 96 months of imprisonment. The Court allowed
 7 Farrell to self-report. However, on July 5, 2016, Pretrial Services obtained a warrant after
 8 Farrell was caught stealing Vicodin from his mother and brother. He also had consumed
 9 alcohol, in violation of his bond. On July 8, 2016, Farrell was arrested. He admitted the
 10 violations, and was remanded to begin serving his sentence. He currently is scheduled to
 11 be released on April 22, 2022.

12 **B. Farrell’s Medical Status**

13 On March 11, 2020, Farrell reported shortness of breath, nausea, light headedness,
 14 and chills, and was transferred to an outside doctor for evaluation. *See* Exhibit A at 4.
 15 He was allowed to return to the jail the same day. *Id.* On March 12, 2020, he reported
 16 “feeling better,” stating that his symptoms “just feel like a common cold.” *Id.* He denied
 17 shortness of breath and stated that his cough was coming from a throat irritation, as
 18 opposed to his lungs. *Id.* He was seen the following day, at which point he denied “any
 19 symptoms including fever, cough, sore throat, or shortness of breath.” *Id.* at 1. He tested
 20 negative that day for COVID-19. *See* Exhibit B at 43.¹

21 In July 2020, Farrell complained that he could not get a full breath, and that he had
 22 an intermittent cough and occasional heart palpitations. *See* Exhibit B at 17. He claimed
 23 that these symptoms had been ongoing since March 2020. *Id.* Farrell was examined by
 24 an EMT paramedic, and found to have a normal heartbeat and pulse and no evidence of
 25 respiratory distress. *Id.* at 18. Farrell was told to return immediately if his condition
 26
 27
 28

¹ Farrell has tested negative for COVID-19 at various other times during his incarceration.

1 worsened, and to follow-up with his normal provider. *Id.* A doctor endorsed this plan by
 2 co-signing the paramedic's note. *Id.* at 19.

3 On August 10, 2020, Farrell was examined by a doctor. *See id.* at 14. Farrell
 4 reported feeling "a brief pause in heart beat" followed by a "heavy beat." *Id.* He said his
 5 symptoms had worsened over the course of the previous three months. *Id.* He reported
 6 feeling fatigued and having "brief episodes of shortness of breath" since he became sick
 7 in March 2020. *Id.* He was found to have a systolic murmur on the left side of his chest.
 8 *Id.* at 16. His doctor prescribed him different medications for the murmur and his
 9 claimed shortness of breath. *Id.* at 15. He also was referred for a echocardiogram. *Id.* at
 10 16. Farrell does not appear to have had such a test. However, on April 7, 2021, a
 11 radiologist reviewed images of Farrell's chest. *See Exhibit C* at 20. The radiologist
 12 found no signs of "acute cardiopulmonary disease" and that his heart size was "within
 13 normal limits." *Id.* The radiologist also reported that Farrell's lungs were "clear." *Id.*

14 On March 22, 2021, Farrell received his second dose of the COVID-19 vaccine,
 15 and therefore is fully vaccinated. *See Exhibit C* at 16.

16 III. ARGUMENT AND AUTHORITY

17 A. The Legal Standards for Compassionate Release

18 "[A] judgment of conviction that includes [a sentence of imprisonment] constitutes
 19 a final judgment' and may not be modified by a district court except in limited
 20 circumstances." *Dillon v. United States*, 560 U.S. 817, 825 (2010). Consistent with that
 21 principle, 18 U.S.C. § 3582(c)(1)(A) provides a court with jurisdiction to reduce an
 22 otherwise final sentence where three requirements are met: (1) the exhaustion requirements
 23 in the statute have been satisfied; (2) an extraordinary and compelling reason supports the
 24 motion; and (3) any reduction is consistent with the applicable policy statement. 18 U.S.C.
 25 § 3582(c)(1)(A). A court may then reduce a sentence if it finds a reduction appropriate
 26 after consideration of the factors in 18 U.S.C. § 3553(a).

27 The referenced policy statement adopted as directed by 28 U.S.C. § 994(t) and
 28 found at USSG § 1B1.13, directs that in addition to an "extraordinary and compelling

reason” supporting the reduction, a court must find (1) that the defendant does not present a danger to others and the community, and (2) that the reduction be appropriate after considering the factors in 18 U.S.C. § 3553(a). The application notes then provide that “extraordinary and compelling” reasons exist under the following circumstances:

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

USSG § 1B1.13 cmt. n.1. The application notes further state that “[t]he court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth in 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant’s medical condition, the defendant’s family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.” USSG § 1B1.13 cmt. n.4.

Based on the statutory text, and the Supreme Court’s decision *Dillon v. United States*, 560 U.S. 817, 827 (2010), addressing policy statement referenced in the parallel provision found in § 3582(c)(2), the government has taken the position that the policy statement referenced in § 3582(c)(1)(A) should control this Court’s analysis. This Court has already concluded otherwise and the Ninth Circuit has recently held to the contrary.

1 | See *United States v. Aruda*, __ F.3d __, 2021 WL 1307884 (9th Cir. 2021). In *Aruda*, the
2 | Court held that USSG § 1B1.13 applies only to motions filed by the Director of the Bureau
3 | of Prisons and not to motions pursuant to 18 U.S.C. § 3582(c)(1)(A) filed by a defendant
4 | because the Sentencing Commission had not yet issued a policy statement applicable to
5 | such motions after the First Step Act. *Id.* at *4. The *Aruda* Court expressed agreement
6 | with the same conclusion reached in *United States v. McGee*, __ F.3d __, 2021 WL 1168980
7 | at *12 (10th Cir. Mar. 29, 2021); *United States v. McCoy*, 981 F.3d 271, 281–84 (4th Cir.
8 | 2020); *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020); *United States v. Jones*,
9 | 980 F.3d 1098, 1109 (6th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 234–37 (2d
10 | Cir. 2020). Nevertheless, the Court also observed that “[t]he Sentencing Commission's
11 | statements in U.S.S.G. § 1B1.13 may inform a district court's discretion for § 3582(c)(1)(A)
12 | motions filed by a defendant, but they are not binding.” *Aruda*, 2021 WL 1307884 at *4,
13 | citing *Gunn*, 980 F.3d at 1180.

14 | Therefore, applying the statutory requirements, to be eligible for a reduction in
15 | sentence, a defendant must first meet the exhaustion requirements, and then present an
16 | “extraordinary and compelling” reason consistent with the policy statement. If those
17 | standards are met, this Court must then consider whether a reduction is appropriate after
18 | consideration of the factors in 18 U.S.C. § 3553(a). Consideration of the danger that
19 | defendant may continue to present to others and the community is a factor that is only
20 | directly referenced in USSG 1B1.13, and after the *Aruda*, is no longer a finding that the
21 | Court must make. Nonetheless, danger is relevant to the question of whether a sentence
22 | reduction is warranted since the factors in § 3553(a) include the need “to protect the public
23 | from further crimes of the defendant. . . .” 18 U.S.C. § 3553(a)(2)(C). Applying these
24 | standards, a sentence reduction is not appropriate in this case.

B. Farrell Has Not Established Extraordinary and Compelling Reasons for Release.

1. *The Exhaustion Requirement*

As the proponent of the motion, to qualify for a reduction in sentence, the defendant bears the burden of showing he satisfied the exhaustion requirement. *See United States v. Van Sickle*, 2020 WL 2219496, at *3 (W.D. Wash. May 7, 2020) (citing cases). Farrell has indeed exhausted his remedies. On January 26, 2021, the Warden denied his request for compassionate release.

2. *Farrell Has Not Shown an “Extraordinary and Compelling Reason” for His Release.*

After satisfying the exhaustion requirement, to be eligible for a district court’s discretionary consideration of a reduced sentence under this provision, a defendant bears the burden to show “extraordinary and compelling reasons” that meet the high bar set by Congress and the Sentencing Commission for compassionate release to be granted. *See Riley v. United States*, 2020 WL 1819838 at *7 (W.D. Wash. Apr. 10, 2020). “In general, chronic conditions that can be managed in prison are not a sufficient basis for compassionate release.” *United States v. Ayon-Nunez*, 2020 WL 704785, at *2–3 (E.D. Cal. Feb. 12, 2020). Rather, “compassionate release . . . is an extraordinary and rare event.” *United States v. Mangarella*, 2020 WL 1291835, at *2–3 (W.D.N.C. Mar. 16, 2020). This reluctance to view compassionate release too expansively is grounded in a concern that it could yield significant sentencing disparities. *United States v. Ebbbers*, 432 F.Supp.3d 421, 430 (S.D.N.Y. Jan. 8, 2020). Compassionate release is not a tool to “correct” a judgment. *Id.*

In this case, Farrell has not presented extraordinary and compelling reasons justifying release. It is not even clear that Farrell is ill, let alone that his illness is so severe that release is necessary. The latest scan of his heart and his lungs—conducted in April 2021—revealed no heart or lung issues. Moreover, although Farrell has complained about heart palpitations and shortness of breath, he appears to have functioned just fine while in prison, and has required no serious care. Farrell complains that a doctor should have

1 evaluated him sooner in the summer of 2020, and that he should have received the
2 echocardiogram that was recommended in August 2020. Even if these complaints have
3 merit, they fall far short of constituting “extraordinary and compelling” reasons justifying
4 a reduction in his sentence. Farrell has administrative remedies he can pursue within the
5 BOP system if he feels he is not receiving adequate care—none of which he has pursued
6 to date.

7 Moreover, although Farrell’s concerns are not focused on COVID-19, the
8 government notes that Farrell is now fully vaccinated against the disease. Indeed, as of the
9 date of this filing, up to forty-two percent of inmates at FCI Sheridan are now fully
10 vaccinated. In sum, Farrell has now met the threshold showing necessary to justify release.

11 **C. The Seriousness of the Offense and the Defendant’s Role.**

12 If this Court nonetheless concludes that the defendant’s claims meet that standard,
13 before granting his motion, this Court must first determine whether a reduction is warranted
14 applying the factors in 18 U.S.C. § 3553(a), including as a factor whether the defendant
15 continues to present a danger to the community. Further, compassionate release can yield
16 significant sentencing disparities which would be contrary to the application of those
17 factors. *United States v. Ebberts*, 432 F.Supp.3d 421, 430 (S.D.N.Y. Jan. 8, 2020).
18 Applying these factors, release is not warranted here.

19 Farrell’s criminal conduct was very serious. He was a senior administrator of a
20 sophisticated dark web operation that distributed drugs worldwide. He used his technical
21 expertise to help operate and maintain the site, and also to launch an attack on a competitor.
22 Moreover, Farrell proved untrustworthy while on release. After the Court allowed him to
23 self-surrender, Farrell stole drugs from his family members, and consumed alcohol, leading
24 the Court to revoke his bond, and order that he start serving his sentence immediately.

IV. CONCLUSION

For the foregoing reasons, the government respectfully submits this motion should be denied.

DATED this 19th day of April, 2021.

Respectfully submitted,

TESSA M. GORMAN
Acting United States Attorney

/s/ Thomas M. Woods
THOMAS M. WOODS
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Telephone: (206) 553-7970
Email: Thomas.Woods2@usdoj.gov